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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,359	06/28/2001	Kurt A. Keil	KK#2-3	2197

7590 11/08/2005  
Arthur R. Eglington, Esq.  
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Pottsville, PA 17901

EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/892,359

Applicant(s)

KEIL, KURT A.

Examiner

Phi D. A.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,9,15-17,20 and 23 is/are allowed.
- 6) ☒ Claim(s) 1,4,6,10,18 and 19 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,7 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Allowable Subject Matter***

2. The indicated allowability of claims 1, 4, 6, 10, 18-19 is withdrawn in view of the newly discovered reference(s) to Ecket et al, Daniels, Kolvites et al. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 4-7 “ first member which is left intact...linear groovings” is confusing. It is thus indefinite.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4, 6, 10, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ecket et al (1867449) in view of Daniels (4001993).

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Ecket et al shows a rigid member made from sheet metal stock, the member having a pair of externally/internally placed linear groovings (20) along at least one planar surface such that the linear groovings permit separation under force (page 2 lines 19-23).

Ecket et al does not show the rigid member being tubular member.

Daniels shows a tubular member (12).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ecket et al's structure to show the member being tubular as taught by Daniels because it would provide a stronger brace member.

Per claim 10, Ecket et al as modified shows the member being rectangular cross section, the internal span of the one opposing pair of sidewalls having depending end segments.

Per claim 18, Ecket et al shows all the claimed limitations including the right angle member, and a second member 913).

Ecket et al does not show the second member being a tubular member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ecket et al's structure to show the second member being tubular because having the vertical member being tubular would strengthen the structural support of the member.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ecket et al (1867449) in view of Daniels (4001993) as applied to claim 1 above and further in view of Kolvites et al (5271337).

Ecket et al as modified shows all the claimed limitations except for the material of construction being a thermoplastic resin.

Kolvites et al discloses a supporting beam made of thermoplastic resin.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ecket et al's modified structures to show the material of construction being a thermoplastic resin because it provides for high torsional strength and impact resistant as taught by Kolvites ( col 10 lines 3-17).

***Allowable Subject Matter***

8. Claims 8-9, 15-17, 20, 23 are allowed.

9. Claims 12-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. Claims 2-3, 5, 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

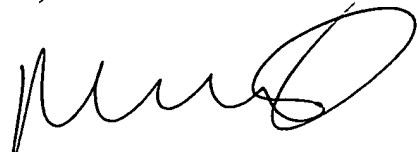
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different brace designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Phi Dieu Tran A', with a large, stylized loop at the end.

Phi Dieu Tran A

11/3/05